



Federal Communications Commission
Washington, D.C. 20554

DA 06-1301

Released: June 23, 2006

Mr. Alfred Hislop
64 Lookout Mountain Circle
Golden, Colorado 80401

Edward W. Hummers, Jr.
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801

Re: Application for Renewal of License
Station KTVD(TV), Denver, Colorado
File No. BRCT-20051130AYO
Facility ID No. 68581

Gentlemen:

On March 1, 2006, Mr. Alfred Hislop filed an Informal Objection to the above-referenced license renewal application of Twenver Broadcast, Inc. ("Twenver"), licensee of station KTVD(TV), Denver, Colorado. On March 27, 2006, Twenver filed a response to the Informal Objection.¹ For the reasons set forth below, we deny the Informal Objection.

Background. Mr. Hislop argues that station KTVD(TV) has not acted in the public interest by withholding "its digital television service from the greater Denver area in order...to obtain zoning and permission to build a facility on Lookout Mountain in Jefferson County, Colorado."² Mr. Hislop states that station KTVD(TV) has placed its temporary transmitter on a building in downtown Denver fully aware that such a location could not provide coverage for the Denver area and that a different location zoned for broadcast towers could provide better coverage.

Twenver argues that the Informal Objection is part of an ongoing dispute over the location of station KTVD(TV)'s proposal to construct digital facilities on Lookout Mountain, and that Mr. Hislop is a party to zoning litigation that has delayed construction of permanent digital facilities that would provide expanded coverage of the Denver metropolitan area. According to Twenver, the Commission, in the meantime, has authorized it to broadcast digitally

¹ The Informal Objection had not been served on Twenver, but was subsequently forwarded to its counsel by Commission staff.

² *Informal Objection*, at 1.

from the Republic Bank Building in downtown Denver, and that the temporary digital facilities meet minimum coverage requirements.

Discussion. Section 309(k)(1) of the Communications Act of 1934 (the “Act”) states that the Commission shall grant a license renewal application if it finds, with respect to that station, that (a) the station has served the public interest, convenience, and necessity; (b) there have been no serious violations by the licensee of the Act or Commission rules and regulations; and (c) there have been no other violations by the licensee of the Act or the rules or regulations of the Commission which, taken together, would constitute a pattern of abuse.³ The Commission applies a two-step analysis to petitions to deny and informal objections under the public interest standard. The pleading must first contain specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest.⁴ If the allegations meet this test, then the Commission will designate the application for hearing when the allegations, together with any opposing evidence before the Commission, raise a substantial and material question of fact as to whether granting the application would serve the public interest, or if the Commission is otherwise unable to conclude that granting the application would serve the public interest.⁵

Mr. Hislop has not shown that grant of the license renewal application would be *prima facie* inconsistent with the public interest. The Commission is aware of the ongoing dispute concerning the proposed location of station KTVD(TV)’s digital facilities on Lookout Mountain. As Twenver points out, a decision by the Jefferson County District Court that may resolve the dispute is expected by the end of September 2006. In the meantime, the staff has granted Twenver special temporary authority (“STA”) to broadcast digitally at the site in downtown Denver.⁶ The temporary digital facilities provide the requisite coverage of the station’s community of license as set forth in the grant of the STA. Because station KTVD(TV) is in full compliance with the Commission’s rules concerning digital television coverage, no further inquiry is warranted.

³ 47 U.S.C. §309(k)(1).

⁴ 47 U.S.C. §309(d)(1); *cf. Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) (“*Astroline*”).

⁵ *Astroline*, 857 F.2d at 1561; 47 U.S.C. §309(e).

⁶ See Letter from Clay Pendarvis, Associate Chief, Video Division to Twenver Broadcast Inc., September 29, 2005. Twenver has requested a six-month extension of this STA. File No. BEDSTA-20060321AAW.

Accordingly, the Informal Objection filed by Alfred Hislop **IS DENIED. IT IS FURTHER ORDERED** that, pursuant to Section 309(k) of the Act, the application (File No. BRCT-20051130AYO) of Twenver Broadcast, Inc., for renewal of license for station KTVD(TV), Denver, Colorado, **IS HEREBY GRANTED.**

Sincerely,

James J. Brown
Deputy Chief, Video Division
Media Bureau